IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 49 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

GUJARAT NARMADA VALLEY FETILIZER CO.

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

SERVED BY RPAD - (N) for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of the assessment year 1981-82 :-

"Whether, on the facts and in the circumstances of the case, the amount of Rs.16,40,449/- as interest was taxable ?"

2 During the year under consideration, the assessee company received the interest to the tune of Rs.18,22,721/-. The assessee deducted the said amount from the amount of interest paid by it and capitalised the balance. The assessee contended that the entire interest paid on borrowing for the purpose of the project was capitalised and added to the cost of the project and the receipt of the aforesaid interest was only incidental to the main activity of implementing the project. The I.T.O. rejected this contention on the ground that the company had not commenced any production and the project had not yet been completed. Hence, the aforesaid interest received was income from other sources. The I.T.O. however allowed 10% of this amount as expenditure for earning that income. The C.I.T.(Appeals) allowed the assessee's appeal. The Tribunal confirmed the said order. Hence, this reference at the instance of the revenue.

3 We have heard Mr.B.B.Nayak, learned Counsel for the revenue. Though served none appears for the respondent assessee.

4 At the hearing of this reference our attention was invited to the decision of the Apex Court in the case of Tuticorn Alkali Chemicals and Fertilizers Ltd. vs. C.I.T., 227 I.T.R. 172, laying down the principle that in such cases since the business has yet not commenced, interest received on the borrowing has to be treated as income from other sources. Interest income is always of a revenue nature unless it is received by way of damages or compensation. If a person borrows money for business purposes but utilises that money to earn interest, however temporarily, the interest so generated will be his income. Merely because it was utilised to repay the interest on the loan taken by the assessee, it did not cease to be his income. In such matters the question has to be decided according to the principles of law and not according to the accountancy practice. Similar view has been taken by this Court in the case of this very assessee in the decision dated 10/7/2001 in Income Tax Reference No. 201 of 1996.

5 Following the aforesaid decisions, our answer to the question is in the affirmative i.e. in favour of the revenue and against the assessee.

6 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt